

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 920 of 2000

in

MISC. CIVIL APPLICATION No 558 of 2000

in

Special Civil Application No.6863 of 1999

with

Civil Application No.12118 of 2000

with

Letters Patent Appeal No.174 of 2001

in

Special Civil Application No.6863 of 1999

with

Civil Application No.2812 of 2001

with

Civil Application No.2813 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JYOTI LTD

Versus

NARPATSIH MAVSIH SOLANKI

Appearance:

MR PS CHARI for the Appellant in both the matters.
MR RD RAVAL for the Respondent in both the matters.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/03/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. At the request made by the counsel for the parties, LPA No.174 of 2001 has been called in Court and is being disposed of by this common order.

2. Considering the averments contained in Civil Application No.2812 of 2001, delay of 26 days occasioned in preferring Letters Patent Appeal No.174 of 2001 is condoned.

Both the Appeals are admitted. At the request of the learned counsel for the parties, the Appeals are finally disposed of by us today.

3. Letters Patent Appeal No.920 of 2000 is preferred against the order dated 7.4.2000 passed in Miscellaneous Civil Application No.558 of 2000, whereby review petition preferred against order dated 21.2.2000 passed in Special Civil Application No.6863 of 1999 has been rejected.

4. Letters Patent Appeal No.174 of 2001 has been preferred against the order dated 21.2.2000 passed in Special Civil Application No.6863 of 1999. It is against both the order dated 21.2.2000, refusing interim relief to the employer, and order dated 7.4.2000, rejecting the review petition, that these two Letters Patent Appeals are before us.

5. Earlier, against the Award of the Labour Court, Vadodara, dated 11.5.1999, Special Civil Application No.6863 of 1999 has been filed by the present employer and Special Civil Application No.6151 of 1999, against the same Award, has been preferred by the employee. The operative part of the Award of the Labour Court dated 11.5.1999 (rendered in English) reads :-

"

The References of the concerned workmen are

allowed. Both the concerned workmen will be reinstated in service as set out on page No.8 paragraph 11 of this Award. It is directed that the First Party Company will pay 50% back wages to both the workmen. The First Party Company will pay Rs.2,000/- each to both the workmen towards cost of the Reference. This Award will have to be implemented within 30 days of the publication.

If the Company fails to implement this, in that case, the Company will pay penal interest at the rate of 18% with effect from 1.3.1999.

... .. "

6. In the petition preferred by the employer, i.e. Special Civil Application No. 6863 of 1999, by the impugned order dated 21.2.2000, prayer made for grant of interim relief by way of stay of the Award of the Labour Court has been refused for the following reasons mentioned in the order :-

"

Heard the learned Advocates. Rule.
Mr.Raval appears for and waives service of Rule on behalf of the respondent. To be heard with S.C.A. No.6151/99. Both the learned Advocates agree that pending the Reference before the Tribunal, the petitioner has been reinstated in service in the year 1997. In that view of the matter the interim relief is refused. However, it is clarified that the implementation of the impugned award shall be subject to the result of this petition.

... .. "

7. Learned counsel appearing for the employer submits that merely because the workmen were reinstated in service in 1997, the prayer of the employer for stay of the remaining part of the Award of the Labour Court could not have been rejected without assigning any reason in the impugned order. The employer, therefore, made an application for review of that order, which has also been rejected by the learned single Judge on 7.4.2000 without stating any reasons for the rejection. The order reads

:-

"

Heard the learned Advocates. The applicant herein is the writ petitioner in Special Civil Application No.6863 of 1999. The applicant seeks review of the order dt. 21st February, 2000 made on the writ petition. No ground for review is made out. The application is rejected.

... .. "

8. On behalf of the workmen, learned counsel Shri R.D. Raval appears and states that the learned Judge, after taking into consideration the submissions made by the employer and the workmen in their counter petitions has refused interim relief as the workmen were reinstated, but were not being paid increments attached to the post and the salary.

9. In the two orders impugned dated 21.2.2000 refusing interim relief and the order rejecting review dated 7.4.2000, the learned Judge having not recorded any reasons, it is not possible for this Court to come to any conclusion that the submissions of the parties were considered and the prayer for stay of the remaining part of the Award regarding payment of 50% back wages was also refused by the learned single Judge by holding that there was no case made out for granting stay of even the remaining part of the Award. It is apparent to us that even though the workmen were reinstated, prayer for stay of the remaining part of the Award could have been considered. The impugned order of the learned single Judge dated 21.2.2000, on its reading, shows as if she assumed that, on reinstatement of the workmen, no further relief against the remaining part of the Award was required to be considered. Learned counsel appearing for the workmen insisted that this Court should go into the question of desirability of staying or refusing implementation of the remaining part of the Award regarding recovery of 50% of back wages. In the operative part of the Award, there is also a mention to page 8 of paragraph 11 of the Award regarding benefits which the workmen claimed on reinstatement of service.

10. In our considered opinion, the learned single Judge ought to have considered the prayer of the employer for stay of the part of the Award granting back wages

consequent to the grant of relief of reinstatement in service. Since the learned single Judge has expressed no opinion in rejecting the stay of that part of the Award, it would be proper for us to remand the matter to the learned single Judge for reconsidering the prayer of the employer for stay of the Award of back wages and other relief consequential to grant of reinstatement.

11. Consequently, we set aside the order dated 21.2.2000 passed by the learned single Judge and remand the matter to the learned single Judge to re-hear the parties on the question of grant of interim relief. Let Special Civil Application No.6863 of 1999 be listed with Special Civil Application No.6151 of 1999 arising from the same Award of the Labour Court.

12. Letters Patent Appeal No.920 of 2000 preferred against the impugned order dated 21.2.2000 and Letters Patent Appeal No. 174 of 2001 preferred against the order passed on the review petition are disposed of with the above directions.

In view of the above order, no order need be passed in Civil Application Nos. 12118 of 2000 and 2813 of 2001.

(D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

(apj)